

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 IO-13 ISO-00 EB-07 TRSE-00 AID-05
OMB-01 PM-04 NSC-05 SP-02 SS-15 PRS-01 CIAE-00
INR-07 NSAE-00 IGA-02 COME-00 DODE-00 SSO-00
INRE-00 NSCE-00 EA-07 /085 W
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O R 211943Z JUN 77
FM AMEMBASSY PARIS
TO SECSTATE WASHDC IMMEDIATE 4490
INFO USMISSION USUN
USMISSION GENEVA
ALL OECD CAPITALS

C O N F I D E N T I A L SECTION 01 OF 02 PARIS 18219

USOECD

E.O. 11652: GDS
TAGS: EINV, OECD
SUBJECT: ECOSOC NEGOTIATIONS ON INTERNATIONAL AGREE-
MENT ON ILLICIT PAYMENTS: INFORMAL MEETING AT OECD
ON JUNE 20, 1977

REF: STATE 141773

1. SUMMARY. OECD COUNTRIES HELD USEFUL CONSULTATION

TODAY ON ECOSOC WORK ON AN INTERNATIONAL AGREEMENT ON
ILLICIT PAYMENTS, IN ADVANCE OF JUNE 27 TO JULY 1
ECOSOC WORKING GROUP MEETING IN GENEVA. THERE WAS
BROAD SUPPORT IN PRINCIPLE FOR AN INTERNATIONAL AGREE-
MENT; GENERAL APPRECIATION OF US FLEXIBILITY ON PUBLIC
DISCLOSURE; CONTINUED RESERVATIONS AS TO US SUBSTANTIVE
PROPOSALS, PARTICULARLY REPORTING OF AGENTS' FEES.
SEVERAL COUNTRIES INDICATED THEY BELIEVE IT WOULD BE
PREMATURE TO CONVENE DIPLOMATIC CONFERENCE IN 1978.
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END SUMMARY.

2. CONSULTATIONS WERE WELL ATTENDED AND CONDUCTED IN
GOOD ATMOSPHERE. IN ADDITION TO US, SWITZERLAND,
FRANCE, FRG, UK, CANADA, NETHERLANDS AND JAPAN PARTI-
CIPATED WITH EXPERTS FROM CAPITALS. SWEDEN, SPAIN,
ITALY, TURKEY, BELGIUM, NORWAY AND GREECE WERE REPRE-

SENTED BY OECD MISSIONS.

3. US DEL (FELDMAN) DISTRIBUTED DRAFT ECOSOC RESOLUTION (PER REFTTEL, EXCEPTING "RECOMMENDATION" AT END OF PARA 3 OF PREFATORY LANGUAGE) AND ASKED FOR SUPPORT FOR WORKING GROUP RECOMMENDATION AND ECOSOC DECISION TO CONVENE DIPLOMATIC CONFERENCE IN 1978 TO NEGOTIATE INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS WITH FURTHER PREPARATORY WORK TO BE PERFORMED BY EXPANDED WORKING GROUP OPEN TO ALL ECOSOC MEMBERS. US DEL EXPLAINED THAT IF CONSENSUS COULD BE ACHIEVED ON THESE PROCEDURES, AND IF THERE WAS SUPPORT FOR A MEANINGFUL AGREEMENT INCLUDING SIGNIFICANT ELEMENT OF HOME COUNTRY RESPONSIBILITY (SUCH AS CRIMINALIZATION AND REPORTING OF AGENTS' FEES PAID TO OBTAIN GOVERNMENT BUSINESS), US DEL WOULD BE PREPARED TO BE FLEXIBLE ON PUBLIC DISCLOSURE. US DEL FURTHER NOTED THAT USG WOULD AGREE IF OTHER GOVERNMENTS WISHED TO LIMIT EXTRATERRITORIAL APPLICATION OF THEIR CRIMINAL LAWS TO CASES WHERE THE ACT WAS ALSO AN OFFENSE UNDER THE LAWS OF THE HOST COUNTRY.

4. A NUMBER OF COUNTRIES INDICATED THEY COULD SUPPORT AN INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS (FRANCE, FRG, CANADA, SWITZERLAND, NETHERLANDS). JAPAN SPOKE OF GIVING "PRIORITY" TO AN AGREEMENT, WHILE KEEPING OTHER OPTIONS OPEN. UK SAID IT LOOKS TO SOME FORM OF INTERCONFIDENTIAL

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NATIONAL AGREEMENT AND ITS PAST EMPHASIS ON OTHER MEASURES MAY BE A MATTER OF SEMANTICS. ITALY FAVORS "WORK WARDS AN INTERNATIONAL AGREEMENT". AS TO US PROPOSAL FOR DIPLOMATIC CONFERENCE IN 1978, ONLY SWEDEN STATED FLATLY IT SUPPORTS US PROPOSAL. CANADA SAID IT SUPPORTS AN AGREEMENT ASAP AND A DIPLOMATIC CONFERENCE IN 1978, PROVIDED SOME CONSENSUS DEVELOPS ON CONTENT OF AN AGREEMENT. UK, FOLLOWED BY FRANCE, FRG, ITALY AND JAPAN ARGUED THAT A DIPLOMATIC CONFERENCE IN 1978 IS PREMATURE IN VIEW OF LIMITED PROGRESS ON SUBSTANCE TO DATE AND ATTITUDE OF LDC'S. THEY ALL EXPRESSED CONCERN THAT PREMATURE CONFERENCE COULD INVITE FAILURE. DUTCH DEL SAID HE WAS NOT OPPOSED TO

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C O N F I D E N T I A L SECTION 02 OF 02 PARIS 18219

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CONFERENCE IN 1978 BUT THOUGHT IT WOULD BE TOO EARLY
UNLESS THE NUMBER OF BRACKETED TEXTS COULD BE REDUCED.

5. CRIMINALIZATION: CANADA INDICATED IT WAS PREPARED
TO CONSIDER EXTENDING CRIMINAL LAW TO BRIBERY OF
FOREIGN OFFICIALS BY CANADIAN NATIONALS PROVIDED THERE
WAS SUBSTANTIAL NEXUS BETWEEN OFFENSE AND CANADIAN
TERRITORY. DUTCH AND FRENCH WELCOMED CONTINUED US
READINESS TO ACCEPT DOUBLE CRIMINALITY AS POSITIVE
ELEMENT. SWISS SAID THAT THEIR LAWS PERMITTED PROSECU-
TION OF FOREIGN OFFENSES UNDER CERTAIN CONDITIONS. UK
INDICATED THAT IT MIGHT CONSIDER CRIMINALITY, BUT EX-
PRESSED DOUBTS AS TO ITS FEASIBILITY. PRIVATELY,
JAPANESE DEL INDICATED THAT GOJ IS CONSIDERING SPECIAL
LEGISLATION BUT, PUBLICLY, HE EMPHASIZED LIMITS OF
JAPANESE JURISDICTION. IN RESPONSE TO DUTCH AND
CANADIAN CONCERN ABOUT APPLICATION OF LAWS TO FOREIGN
SUBSIDIARIES, US DEL INDICATED READINESS TO ATTEMPT TO
WORK OUT ACCEPTABLE UNDERSTANDING ON JURISDICTION WHICH
MIGHT BE POSSIBLE IN CONTEXT OF WIDELY ACCEPTED AGREE-
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MENT.

6. REPORTING AGENTS' FEES: CANADA INDICATED TENTATIVE
INTEREST IN REPORTING. SWITZERLAND, FRG, JAPAN AND
FRANCE ALL EXPRESSED APPRECIATION FOR US FLEXIBILITY

AND "REALISM" IN RESPECT OF PUBLIC DISCLOSURE BUT EMPHASIZED DIFFICULTIES OF ESTABLISHING ANY REPORTING SYSTEM. DUTCH MENTIONED DIFFICULTIES OF REPORTING AND INDICATED ANY SYSTEM WOULD HAVE TO BE LIMITED TO SUBSTANTIAL PAYMENTS.

7. US DEL REVIEWED ARGUMENTS IN FAVOR OF US PROPOSAL AND EMPHASIZED NEED FOR OECD COUNTRIES TO SHOW SOLID SUPPORT FOR A CONFERENCE TO DRAFT INTERNATIONAL AGREEMENT IN 1978. IF OECD GOVERNMENTS ARE TO ACHIEVE THEIR OBJECTIVES THEY MUST: (1) INVOLVE DEVELOPING COUNTRIES IN CONTINUING WORK ON ILLICIT PAYMENTS; (2) OBTAIN LDC SUPPORT FOR AN EXPERT WORKING GROUP. US DEL STATED THAT, IN VIEW OF IMPORTANCE ATTACHED TO THIS ISSUE BY PRESIDENT CARTER, US COULD NOT ACCEPT ECOSOC RESOLUTION WHICH LEFT DECISION ON DIPLOMATIC CONFERENCE TO A FUTURE DATE WHICH WOULD BE CONTINGENT ON PRIOR CONSENSUS ON CONTENT OF AGREEMENT. IN THESE CIRCUMSTANCES G-77 WOULD NOT TAKE HARD DECISION TO SUPPORT AN AGREEMENT AND NO PROGRESS WOULD BE MADE. IF OECD MEMBERS WOULD SUPPORT US RESOLUTION, DEVELOPING COUNTRIES MIGHT BE PERSUADED TO AGREE TO IT. IN THAT CASE, TWO OR THREE MEETINGS OF ECOSOC WORKING GROUP (OF ONE TO TWO WEEKS' DURATION EACH) WOULD BE SUFFICIENT TO NARROW DIFFERENCES IN PREPARATION FOR DIPLOMATIC CONFERENCE. UK DEL ACKNOWLEDGED FORCE OF THESE AGREEMENTS BUT STILL WISHED TO FIND SOME FLEXIBILITY TO AVOID FIRM COMMITMENT TO 1978 CONFERENCE. US DEL
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EMPHASIZED THAT US HAD DECIDED TO SHOW FLEXIBILITY IN PROPOSALS AT THIS EARLY STAGE BECAUSE IT WANTED TO OBTAIN SUPPORT OF OECD FOR DIPLOMATIC CONFERENCE IN 1978 AND HE URGED DELS TO RETURN TO CAPITALS AND GIVE FURTHER CONSIDERATION TO FAVORABLE RESPONSE.

8. FRENCH DEL, WHO WAS GENERALLY HELPFUL, POINTED OUT THAT THERE MIGHT BE GREAT DIFFICULTIES IN SCHEDULING MEETING TIME FOR ECOSOC WORK ON ILLICIT PAYMENTS PRIOR TO SUMMER OF 1978. HE REFERRED TO DIFFICULTIES ENCOUNTERED IN SCHEDULING FUTURE MEETINGS ON UN-TNC CODE OF CONDUCT IN 1977 AND HEAVY SCHEDULE OF MEETINGS ON THIS CODE SET FOR FIRST HALF OF 1978. US DEL INDICATED WE WOULD HAVE TO FACE THAT PROBLEM (AND OTHERS) REGARDLESS OF WHEN DIPLOMATIC CONFERENCE WAS SCHEDULED. US IS NOT PREPARED TO DEFER WORK ON ILLICIT PAYMENTS AGREEMENT. IF, UNEXPECTEDLY, WE COULD NOT CONTINUE WORK IN ECOSOC, WE WOULD HAVE TO CONSIDER ALTERNATIVES.
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